

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

VENTANA MEDICAL SYSTEMS, INC.,

Plaintiff,

v.

DAKOCYTOMATION CALIFORNIA INC.,

Defendant.

Civil Action No. 04-1522-GMS

JOINT FINAL CLAIM CHART

Pursuant to the Court's Scheduling Order adopted March 31, 2005, the parties submit the attached Joint Final Claim Chart in this matter.

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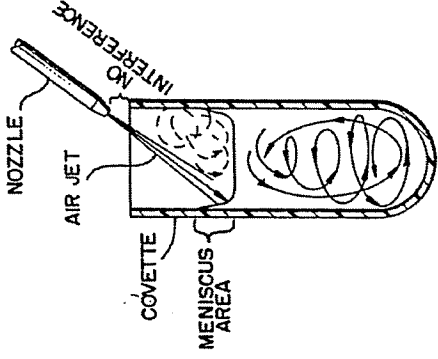
DATED: October 3, 2005

Joint Final Claim Chart

‘901 Patent Claim 1	Ventana’s Proposed Construction and Intrinsic Evidence	DakoCytomation’s Proposed Construction and Intrinsic evidence
1. A biological reaction apparatus for dispensing a selected reagent to a slide containing a sample, said biological reaction apparatus comprising:		
a reagent carousel having a plurality of reagent container supports thereon;	The parties agree that this claim element is plain on its face and does not require construction.	
a homing and indexing device, operatively coupled to the reagent carousel, for identifying the position of each reagent container support with reference to a home position;	The parties agree that this claim element is plain on its face and does not require construction.	
a motor engaging the reagent carousel and operatively coupled to said homing and indexing device, for rotating the reagent carousel and positioning a preselected reagent container support in a reagent supply zone, wherein said reagent supply zone is oriented so that reagent in a container in said preselected reagent container support is dispensable to a slide and wherein each of the reagent container supports is arranged to accommodate a reagent container such that it is positioned above a slide when in the reagent supply zone whereby the reagent is dispensable from a lower end of said container onto the slide;	The parties agree that this claim element is plain on its face and does not require construction.	

'901 Patent Claim 1	Ventana's Proposed Construction and Intrinsic Evidence	DakoCytomation's Proposed Construction and Intrinsic evidence
<p>a sample carousel arranged beneath said reagent carousel for cooperation therewith, and having a plurality of slide supports with each slide support engaging a slide having a substantially planar support surface, said slide having a reagent agitation zone for adding and mixing reagents thereto located on the slide's upper surface; and</p>	<p>Ventana believes that the phrase "reagent agitation zone" is plain on its face and does not require construction. To the extent any construction is necessary, "reagent agitation zone" means an area on the slide's upper surface where reagents are added and mixed.</p>	<p>"reagent agitation zone" <i>Proposed Construction:</i> A region where the apparatus adds and mixes reagents without spilling them. The region is not a "reagent agent zone" if it has structural boundaries that retain reagents, such as the walls of a receptacle. <i>Intrinsic Evidence:</i> Fig. 17, 18(c), 32. Col. 12, lines 57-67; col. 13, lines 1-4. '169 App., May 7, 2004 submission, at 16-17. WO8503571(A1) to Hulette</p>

<p>‘901 Patent Claim 1</p> <p>an air mixer comprising an air jet and an air supply means positioned adjacent to a said reagent agitation zone for mixing reagents, said air mixer directing a jet of air at the reagent agitation zone thereby inducing mixing in the reagent agitation zone.</p>	<p>Ventana’s Proposed Construction and Intrinsic Evidence</p> <p>The claimed “air mixer” includes two elements: (i) “an air jet”; and (ii) “an air supply means.” It is the “air mixer” that is “positioned adjacent to a said reagent agitation zone” and it is the “air mixer” that is “for mixing reagents.”</p> <p>The “air jet” is a stream of air.</p> <p>The “air supply means” is written in means-plus-function form pursuant to 35 U.S.C. § 112 ¶ 6. The function of this element is to supply air. The corresponding structure described in the specification is a nozzle.</p> <p>Ventana believes that the phrase “adjacent” is plain on its face and does not require construction. To the extent any construction is necessary, “adjacent” means near.</p> <p><i>Intrinsic Evidence:</i></p> <p>U.S. Patent No. 6,827,901 (“the ‘901 Patent”): Figs. 16 and 17, elements 351, 355, 356 and 357; Fig. 32, elements 351A and 356A; 12:46-56; 12:57-13:15; 16:16-18; 23:19-65</p> <p>Application 10/137,169 (“the ‘169 App.”): Preliminary Amendment dated 5/2/2002; Office Action dated 2/5/2003; Reply to February 5, 2003 Official Action dated 8/5/2003; Office Action dated 10/22/2003</p>	<p>DakoCytomation’s Proposed Construction and Intrinsic evidence</p> <p>DakoCytomation does not believe that each term in this portion of the claim requires construction. Instead, it contends that only the terms “air jet” and “air supply means positioned adjacent to a said reagent agitation zone for mixing reagents” and “adjacent” warrant interpretation.</p> <p>“air jet”</p> <p><i>Proposed Construction:</i></p> <p>A conical or cylindrical stream of air.</p> <p><i>Intrinsic Evidence:</i></p> <p>Figs. 16, 17, 28, 32. Col. 23, lines 19-29, 42-48.</p> <p>U.S. Patent No. 4,815,978, See e.g. Fig. 9:</p> <div data-bbox="958 315 1461 672"> <p>FIG. 9</p> </div>
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'901 Patent Claim 1	Ventana's Proposed Construction and Intrinsic Evidence	DakoCytomation's Proposed Construction and Intrinsic evidence
		<p>WO8503571(A1) to Hulette. See e.g. Fig. 10:</p> <p style="text-align: center;">.]</p> <p style="text-align: center;">FIG. 10.</p>  <p style="text-align: center;">“air supply means positioned adjacent to a said reagent agitation zone for mixing reagents”</p> <p><i>Proposed Construction:</i></p> <p>This is written in means-plus-function form, and is subject to 35 U.S.C. § 112, ¶ 6.</p> <p>The <u>function</u> is mixing reagents.</p> <p>The <u>corresponding structures</u> disclosed in the specification are the air supply channel 358, vortex mixer air jet blocks 220, 222 and 224 or alternatively the vortex air mixer 220A; nozzles 351 and 355 with central axes</p>

'901 Patent Claim 1	Ventana's Proposed Construction and Intrinsic Evidence	DakoCytomation's Proposed Construction and Intrinsic evidence
		<p>which form angles 'd' and 'e' from 5 to 15° with the horizontal.</p> <p><i>Intrinsic Evidence:</i></p> <p>Figs. 11, 16, 17, 28 and 32. Nos. 358, 220, 222, 224, 220A, 351, 355 and letters 'd' and 'e' Col. 3, lines 32-35 and 65-67; col. 4, lines 47-61; col. 12, line 46-col. 13, line 15; col. 23, lines 19-48.</p> <p><u>"adjacent"</u></p> <p><i>Proposed Construction:</i></p> <p>Next to, but not above or underneath.</p> <p><i>Intrinsic Evidence:</i></p> <p>Figs. 16, 17, 28 and 32. Col. 3, lines 65-67; col. 4, lines 47-61; col. 12, line 46-col. 13, line 15; col. 23, lines 19-48.</p> <p>'169 App., May 7, 2004 submission, at 15-16 and 20.</p>

NOTE: The phrases listed above from Claim 1 as requiring construction by the court also appear in Claim 45 of the '901 patent. The parties agree that these phrases have the same meanings in Claims 1 and 45.